Interface Between Competition Law and Personal Data: Challenges and Possibilities

Olga Batura
Leuphana University of Lüneburg, Germany
Outline

• Role of (personal) data in competition: contras and pros
• Role of (personal) data in competition law practice
• Central challenges:
  – Deeper understanding of data (related) markets
  – Collision of economic and non-economic values
Personal data in competition: contras

• Problems:
  – Great volumes, variety and velocity of accumulation of data

• Theories of harm:
  – Harm to consumers due to degradation of quality of products, (loss of privacy) and discouraging innovation
  – Barriers to entry due restrictions on data availability
  – Reduction/ loss of effective competition due to pre-emptive mergers and restrictions of access to data
Personal data in competition: pros

• Advantages:
  – Great volumes, variety and velocity of accumulation of data
• Key asset and input for various companies
• Ubiquitous availability of data from different sources
• Low purchasing price and low cost of analytics
• Different value of different data (real-time data and real-time analytics v historical data) for different businesses
Role of personal data in competition?

- Valuable data = processed (analysed) data
  - Algorithm possibly more valuable than data
  - Processed data => individualised results = more valuable than raw data
  - For the optimisation of own business – limited value of data from third sources

- Value of data differs depending on the company's business
Main lessons from practice (1)

- Incomplete understanding of data markets
  - Recognition that data is traded, but no attempts to define a data market
  - Mixing data, data analytics services, incl. creation of databases, and other derivative services
Main lessons from practice (2)

- Personal data and privacy – not a competition law matter
  - Protection of personal data and privacy by other legal rules; competition law is not an appropriate instrument
  - Failure to consider whether privacy and data protection constitute a non-price element of competition
Open questions for practice and research (1)

• Deeper understanding of data markets
  - Can there be a data market? - Yes, consider markets for raw materials and other inputs, also when these were not offered for sale.
  - Data collection may in fact be data trading!
  - Differentiation of business models relevant to (personal) data: data collection, data analytics, management decision services, wholesale of data, obtaining data from users etc.
  - What do we talk about when we talk about (personal) data: raw data or processed data? What role data analytics play?
Open questions for practice and research (2)

- Discussion about data protection and competition law = reincarnation of the debates on the relationship between competition law and other policies
  - Socio-political factors in the application of competition law
  - Balancing of economic and non-economic objectives => case law shows that public interest objectives can be taken into account
Thank you very much for your attention!